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FUJITSU LIMITED, and
FUJITSU MICROELECTRONICS AMERICA, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

NANYA TECHNOLOGY CORP. and NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiff,

vs.

FUJITSU LIMITED, FUJITSU MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE NO. 06-CV-00025

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR COURT ORDERED MEDIATION AND MEMORANDUM OF POINTS AND AUTHORITIES

[ORAL ARGUMENT REQUESTED]

ORIGINAL

Defendants Fujitsu Limited and Fujitsu Microelectronics America, Inc., (collectively "Fujitsu") hereby oppose the motion of Plaintiffs Nanya Technology Corp. and Nanya Technology Corp. U.S.A. (collectively "Nanya") for court ordered mediation. The Court should deny Nanya's motion because (1) an order forcing the parties to attend a mediation that they have already consented to participate in is unnecessary and improperly compels Judge Infante to undertake mediation of the Guam case without his consent; (2) an order that vaguely makes the "result" of the California mediation "binding in both the Guam and California cases" is illogical and improperly seeks to transform the mediation into an arbitration, and (3) such an order could significantly interfere with Judge Infante's ability to conduct the mediation and could place a cloud of ambiguity over the entire proceeding.

STATEMENT OF FACTS

Nanya filed the present action on September 13, 2006 for declaratory relief and patent infringement against Fujitsu (the "Guam Action"). On October 24, 2006, Fujitsu filed a complaint in the Northern District of California alleging patent infringement and requesting declaratory relief against Nanya (the "California Action"). On February 7, 2007, the Court in the California Action issued a Case Management Order. (*See* Minute and Case Management Order; Exh. A hereto). Pursuant to the Case Management Order, the Court referred Fujitsu and Nanya to court-connected mediation as a means to resolve the matters pending in the California Action. (*Id.* at 1.) The Court noted that it would allow private mediation in lieu of court-connected mediation if the parties were agreeable. (*Id.* at 2.) Both parties then expressed a willingness to proceed with private mediation and the California Court subsequently ordered private mediation for the California Action with the Honorable Edward A. Infante of the Judicial Arbitration and Mediation Service. (*See* Order Withdrawing Case from Court-Sponsored Mediation and Referring Case to Private Mediation; Exh. B hereto.) By agreement of the parties and Judge Infante, this mediation is scheduled to go forward on May 15, 2007.

On March 2, 2007, this Court conducted a Hearing on Motions before Magistrate Judge Manibusan. (*See* Transcript of Pleadings ("Transcript"); Exh. C hereto). During this hearing, Nanya's counsel made an oral motion that the Court authorize Judge Infante to act as

mediator for the Guam Action during his mediation of the California Action. (*Id.* at 80.) This Court responded that it would be more appropriate for Nanya to first ask Judge Infante whether he would agree to mediate both cases at once before requesting such an order from the Court. (*Id.* at 87-88.) Judge Manibusan also expressed some skepticism that such an order was even necessary. (*See, e.g., id* at 85-87.) Further, the Court indicated that a motion would be necessary only if Judge Infante requested formal authorization from this Court to conduct mediation in the Guam Action. (*Id.* at 88-90.) This Court thus denied Nanya's oral motion. (*Id.* at 87-88.)

Disregarding this Court's instructions, Nanya filed the present motion seeking court ordered mediation with Judge Infante in the Guam Action without first asking Judge Infante whether or not he was even willing to mediate both cases. Defendants' understanding is that minimal, if any, effort was made to schedule a call with Judge Infante to discuss these issues. Thus, contrary to Nanya's claims, this Court did not "invite" the filing of the current motion and, as noted, the current motion is inconsistent with the procedure specifically suggested by Magistrate Judge Manibusan.

ARGUMENT

I. NANYA'S ARGUMENTS DO NOT SUPPORT THE RELIEF REQUESTED

Nanya's Motion argues that 1) this Court has inherent powers to order parties to attend pretrial mediation and 2) mediation in this case would be useful and could encourage the parties to reach a global settlement. Neither of these points is disputed by Fujitsu and neither justify the relief requested.

Nanya's Motion does not explain why this Court should order the parties to appear before Judge Infante, thereby effectively ordering Judge Infante to mediate the Guam action without his consent. More significantly, Nanya does not address at all why this Court should issue a broad order that any "result" of Judge Infante's mediation be "binding" on the Guam case even though the mediation itself is *non-binding*. Nanya only vaguely states that this will "preclude[e] litigation in Guam of issues already resolved by the mediation by a disgruntled party." (Nanya's Motion at 2-3.) As explained below, the relief requested is illogical, and could undermine the mediation process before it even begins.

II. BECAUSE THE PARTIES HAVE ALREADY AGREED TO PARTICIPATE IN THE CALIFORNIA MEDIATION, AN ORDER FORCING ATTENDANCE AT THE MEDIATION IS UNNECESSARY AND INAPPROPRIATE

It is simply unnecessary to order the parties to participate in the California mediation. First of all, the California Court has already ordered the parties to participate in this mediation. (*See* Exh. B hereto.) Second, ordering the parties to attend a mediation on May 15, 2007 specifically could cause scheduling problems for both parties as well as for Judge Infante. For example, if Judge Infante needed to reschedule the mediation, Fujitsu and Nanya would potentially be in violation of this Court's order by agreeing to a new date.

Finally, ordering the parties to appear before Judge Infante for mediation is tantamount to ordering Judge Infante to conduct a mediation for the Guam case. Nanya's "scheduling" excuses for not seeking Judge Infante's permission for such an order are weak. Magistrate Judge Manibusan expressed concern about exactly this point and stated in the hearing that the motion should not be brought until "after ascertaining from the mediator whether this is an item which that mediator wants to undertake". (Transcript at 88.) Nanya has made no real effort to obtain Judge Infante's consent.

III. NANYA'S PROPOSED ORDER TO MAKE THE CALIFORNIA MEDIATION BINDING UNDERMINES THE VERY PURPOSE AND NATURE OF MEDIATION

Nanya requests that the Court issue an order that the "[California] mediation be binding in both the Guam and California Actions." *Id.* This request is contrary to the very nature of private mediation. In California, like most states, "[m]ediation is a flexible, *non-binding*, confidential process in which a neutral person (the mediator) facilitates settlement negotiations." ADR L.R. 6-1 (emphasis added). The parties themselves have final discretion whether or not to settle a case, and if they do come to an agreement, they are free to define its terms however they like. Neither suggestions made by the mediator nor proposals made by the parties during a mediation are "binding" without a signed, written agreement. Making private mediation legally "binding" on the parties would defeat the purpose of its voluntary, non-binding nature and effectively convert it to an arbitration proceeding.

Further, having such an order in effect going into the mediation could have a substantial detrimental effect on the mediation itself. Fujitsu could be hesitant to make any proposal or to come to any agreement on any issue because such a "result" of the mediation could be automatically "binding" in both cases. Thus, such an order could effectively rob the mediation of any chance for success before it even begins.

IV. NANYA'S MOTION COULD UNDERMINE JUDGE INFANTE'S ABILITY TO CONDUCT THE MEDIATION

Nanya's proposed order to make the California mediation binding in Guam could significantly undermine and restrict Judge Infante's ability to conduct the California mediation. The authority of California mediators like Judge Infante is provided for by the Northern District of California local rules, which clearly state that the mediator—and not a court or the parties attending the mediation—has sole discretion "to structure the mediation so as to maximize the benefits of the process." ADR L.R. 6-10(a). Should this Court issue an order making the "result" of the mediation binding in Guam, Judge Infante would have to consider the impact on Guam in every step of the mediation process.

CONCLUSION

Nanya's Motion unnecessarily seeks to order the parties to attend a mediation they have agreed to attend, improperly would compel Judge Infante to conduct a mediation without his consent and could undermine the mediation itself before it even begins. Thus, for these and all the foregoing reasons, Fujitsu respectfully requests that this Court deny Nanya's Motion in its entirety.

Respectfully submitted this 16th day of April, 2007.

CALVO & CLARK, LLP
MILBANK, TWEED, HADLEY & MCCLOY LLP
Attorneys for Defendants
Fujitsu Limited and
Fujitsu Microelectronics America, Inc.

By: _____
DANIEL M. BENJAMIN

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED, et al,

v.

NANYA TECHNOLOGY CORP., et al
_____/

No. C 06-06613 CW

MINUTE ORDER AND CASE MANAGEMENT ORDER

Clerk: Sheilah Cahill Reporter: Raynee Mercado
Plaintiff Attorney: Chris Holm; Michael Murray; Christopher Chalsen
Defendant Attorney: Martin Fliesler; Alfonso Chan; Kenneth Shore

A case management conference was held on: 2/2/07. The Case Management Statement and Proposed Order filed by the parties is hereby adopted by the Court as the Case Management Order for the case, except as may be noted below. The Court's standard Order for Pretrial Preparation also applies.

The case is hereby referred to the following ADR process:
Non-binding Arbitration: [ ] Early Neutral Evaluation: [ ]
Court-connected mediation: [X] Private mediation: [ ]
Magistrate Judge settlement conference: [ ]
ADR session to be held by: [06/01/07]
(or as soon thereafter as is convenient to the mediator's schedule)

Deadline to add additional parties or claims: [02/02/07]
(with exception of any counterclaim filed with answer)
Date of next case management conference: [02/01/08]

Completion of Fact Discovery: [02/01/08]
Disclosure of identities and reports of expert witnesses: [03/03/08]
Rebuttal: [04/01/08]
Completion of Expert Discovery: [06/02/08]

All case-dispositive motions and claim construction to be heard at 10:00 AM on or before: [09/26/08]
Final Pretrial Conference at 1:30 P.M. on: [12/19/08]
A 16 day Jury Trial will begin at 8:30 A.M. on: [01/12/09]

Additional Matters: Copy of Court's Order for Pretrial Preparation given to attys in court. Claim Construction will be held in conjunction with any summary judgment motions. Plaintiffs to file opening brief addressing all claims construed and all dispositive motions by 6/27/08; Defendants' opposition and cross-motion re all claims construed and any dispositive motions (contained within a single brief) due 7/25/08; Plaintiffs' reply/opposition (contained within a single brief) due 8/22/08; Defendants' surreply due 9/5/08 (Local Rule page limits apply unless parties seek relief). **A further CMC will be held on 02/01/08 at 1:30 p.m.** to discuss further ADR, Court appointed expert, and the possibility of waiving jury and having trial by Court with special master or trial by subject matter expert;

joint statement due one week prior to FCMC. **A further CMC will also be held on 9/26/08 at 10:00 a.m.** Defendants to give Plaintiffs within 20 days a draft answer and draft counterclaims; Patent Local Rule requirements will kick in at that time. Defendants are agreeable to private mediator; Plaintiffs' counsel to check with client re private mediator and let Court know by end of next week whether Plaintiffs will agree to private mediation and Court will withdraw reference to court-sponsored mediation.

IT IS SO ORDERED.

Dated: 2/7/07

CLAUDIA WILKEN
United States District Judge

Copies to: Chambers; ADR

NOTICE

Criminal Law and Motion calendar is conducted on Mondays at 2:00 p.m. (in custody) and 2:30 p.m. (not in custody). Civil Law and Motion calendar is conducted on Fridays at 10:00 a.m. Case Management Conferences and Pretrial Conferences are conducted on Fridays at 1:30 p.m. Order of call is determined by the Court. Counsel need not reserve a hearing date for civil motions; however, counsel are advised to check the legal newspapers or the Court's website at www.cand.uscourts.gov for unavailable dates.

Motions for Summary Judgment: All issues shall be contained within one motion and shall conform with Civil L.R. 7-2. Separate statements of undisputed facts in support of or in opposition to motions for summary judgment will not be considered by the Court. (See Civil Local Rule 56-2(a)). All briefing on motions for summary judgment must be included in the memoranda of points and authorities in support of, opposition to, or reply to the motion, and must comply with the page limits of Civil Local Rule 7-4. The memoranda should include a statement of facts supported by citations to the declarations filed with respect to the motion. Cross or counter-motions shall be contained within the opposition to any motion for summary judgment and shall conform with Civil L.R. 7-3. The Court may, *sua sponte* or pursuant to a motion under Civil L.R. 6-3, reschedule the hearing so as to give a moving party time to file a surreply to the cross or counter-motion.

All DISCOVERY MOTIONS are referred to a Magistrate Judge to be heard and considered at the convenience of his/her calendar. All such matters shall be noticed by the moving party for hearing on the assigned Magistrate Judge's regular law and motion calendar, or pursuant to that Judge's procedures.

(rev. 5/11/05)

ORDER FOR PRETRIAL PREPARATION

PRETRIAL CONFERENCE

1. Not less than 30 days prior to the pretrial conference, counsel shall **exchange** (but not file or lodge) the papers described in Civil L.R. 16-10(b)(7),(8),(9), and (10), and their motions in limine.

2. At least 20 days before the final pretrial conference, lead counsel who will try the case shall meet and confer with respect to:

(a) Preparation and content of the joint pretrial conference statement;

(b) Resolution of any differences between the parties regarding the preparation and content of the joint pretrial conference statement and the preparation and exchange of pretrial materials to be served and lodged pursuant to this Order for Pretrial Preparation. To the extent such differences are not resolved, parties will present the issues in the pretrial conference statement so that the judge may rule on the matter during the pretrial conference; and

(c) Settlement of the action.

3. Not less than 10 days prior to the pretrial conference, counsel shall submit the following.

(a) Pretrial Conference Statement. The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputed.

(B) Disputed Factual Issues. A plain and concise

statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Disputed Legal Issues. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief.

(4) Further Discovery or Motions. A statement of all remaining discovery or motions.

(5) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(B) Consent to Trial Before a Magistrate Judge. A statement whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(C) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

(6) Miscellaneous. Any other subjects relevant to the trial of the action, or material to its just, speedy and inexpensive determination.

(b) Exhibit List and Objections. The exhibit list shall list each proposed exhibit by its number, description, and sponsoring witness, followed by blanks to accommodate the date on which it is marked for identification and the date on which it is admitted into evidence. **No party shall be permitted to offer any exhibit in its case-in-chief that is not disclosed in its exhibit list without leave of the Court for good cause shown.** Parties shall also deliver a set

of premarked exhibits to the Courtroom Deputy. The exhibit markers shall each contain the name and number of the case, the number of the exhibit, and blanks to accommodate the date admitted and the Deputy Clerk's initials. (Appropriate sample forms are available on the Court's website at www.cand.uscourts.gov). Any objections to exhibits which remain after the pretrial meeting shall be indicated in the pretrial statement.

(c) Witness List. In addition to the requirements of FRCivP 26(a)(3)(A), a brief statement describing the substance of the testimony to be given by each witness who may be called at trial. **No party shall be permitted to call any witness in its case-in-chief that is not disclosed in its pretrial statement without leave of Court for good cause shown.**

(d) Use of Discovery Responses. In addition to the requirements of FRCivP 26(a)(3)(B), a designation of any excerpts from interrogatory answers or from responses for admissions intended to be offered at trial. Counsel shall indicate any objections to use of these materials and that counsel have conferred respecting such objections.

(e) Trial briefs. Briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, which remain after the pretrial meeting.

(f) Motions in Limine. Any motions in limine that could not be settled at the pretrial meeting shall be filed with the pretrial statement. All motions in limine shall be contained within one document, limited to 25 pages pursuant to Civil L.R. 7-2(b), with each motion listed as a subheading. Opposition to the motions in limine shall be contained within one document, limited to 25 pages,

with corresponding subheadings, and filed five (5) days thereafter.

(g) Joint Proposed Voir Dire. The attached voir dire questionnaire will be given to the venire members, and copies of the responses will be made available to counsel at the beginning of voir dire. Counsel may submit a set of additional requested voir dire, to be posed by the Court, to which they have agreed at the pretrial meeting. Any voir dire questions on which counsel cannot agree shall be submitted separately. Counsel may be allowed brief follow-up voir dire after the Court's questioning.

(h) Joint Proposed Jury Instructions. Jury instructions §1.1 through §1.12, §1.13 through §2.2, and §3.1 through §4.3 from the Manual of Model Civil Jury Instructions for the Ninth Circuit (2001 Edition) will be given absent objection. Counsel shall jointly submit one set of additional proposed jury instructions, to which they have agreed at the pretrial meeting. The instructions shall be ordered in a logical sequence, together with a table of contents. Any instruction on which counsel cannot agree shall be marked as "disputed," and shall be included within the jointly submitted instructions and accompanying table of contents, in the place where the party proposing the instruction believes it should be given. Argument and authority for and against each disputed instruction shall be included as part of the joint submission, on separate sheets directly following the disputed instruction.

Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury instructions on a computer disk in WordPerfect or ASCII format. The disk label should include the name of the parties, the case number and a description of the document.

(I) Proposed Verdict Forms, Joint or Separate.

(j) Proposed Findings of Fact and Conclusions of Law (Court Trial only). Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their proposed findings of fact and conclusions of law on a computer disk in WordPerfect or ASCII format. The disk label should include the name of the parties, the case number and a description of the document.

JURY SELECTION

The Jury Commissioner will summon 20 to 25 prospective jurors. The Courtroom Deputy will select their names at random and seat them in the courtroom in the order in which their names are called.

Voir dire will be asked of sufficient venire persons so that eight (or more for a lengthy trial) will remain after all peremptory challenges and an anticipated number of hardship dismissals and cause challenges have been made.

The Court will then take cause challenges, and discuss hardship claims from the individual jurors, outside the presence of the venire. The Court will inform the attorneys which hardship claims and cause challenges will be granted, but will not announce those dismissals until the process is completed. Each side may then list in writing up to three peremptory challenges. The attorneys will review each other's lists and then submit them to the Courtroom Deputy.

Then, from the list of jurors in numerical order, the Court will strike the persons with meritorious hardships, those excused for cause, and those challenged peremptorily, and call the first eight people in numerical sequence remaining. Those people will be the jury.

All jurors remaining at the close of the case will deliberate.

There are no alternates.

SANCTIONS

Failure to comply with this Order is cause for sanctions under Federal Rule of Civil Procedure 16(f).

IT IS SO ORDERED.

Dated: _____

s/CLAUDIA WILKEN
CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

JUROR QUESTIONNAIRE

Please fill out this form as completely as possible and print clearly. Since we want to make copies for the attorneys and the Court, do not write on the back of any page. If you need more room, continue at the bottom of the page. Thank you for your cooperation.

1. Your name: _____

2. Your age: _____

3. The city where you live: _____

4. Your place of birth: _____

5. Do you rent or own your own home? _____

6. Your marital status: (circle one)

single married separated divorced widowed

7. What is your occupation, and how long have you worked in it? (If you are retired, please describe your main occupation when you were working).

_____

_____

8. Who is (or was) your employer?

_____

9. How long have you worked for this employer? _____

10. Please list the occupations of any adults with whom you live.

_____

11. If you have children, please list their ages and sex and, if they are employed, please give their occupations.

_____

_____

_____

12. Please describe your educational background:

Highest grade completed: _____

College and/or vocational schools you have attended:

_____

_____

_____

_____

Major areas of study: _____

13. Have you ever served on a jury before? _____ How many times? _____

If yes: State/County Court _____ Federal Court _____

When? _____

Was it a civil or criminal case? _____

Did the jury(ies) reach a verdict? _____

(rev. 9/4/02)

United States District Court
For the Northern District of California

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED, et al.,

Plaintiffs,

v.

NANYA TECHNOLOGY CORP. et al.,

Defendants.
_____/

No. 06-06613 CW

ORDER WITHDRAWING CASE FROM COURT-SPONSORED MEDIATION AND REFERRING CASE TO PRIVATE MEDIATION

IT IS HEREBY ORDERED that the above-captioned case is withdrawn from the Court's Mediation Program and referred to private mediation with the Honorable Edward A. Infante. Each party to pay half the costs of private mediation.

Dated 2/21/07

CLAUDIA WILKEN
United States District Judge

cc: ADR

EXHIBIT C

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

* * *

NANYA TECHNOLOGY CORP., and NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiffs,

vs.

FUJITSU LIMITED, FUJITSU MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE NO. CV06-00025

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JOAQUIN V. E. MANIBUSAN, JR.,
Magistrate Judge

HEARING ON MOTIONS

FRIDAY, MARCH 2, 2007

* * *

Wanda M. Miles
Official Court Reporter
District Court of Guam

APPEARANCES:

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LAW OFFICES OF MILBANK, TWEED, HADLEY & MCCLOY
BY: MICHAEL M. MURRAY, ESQ.
1 Chase Manhattan Plaza
New York, New York 10005

HAGATNA, GUAM; FRIDAY, MARCH 2, 2007; 10:05 A.M.

* * *

THE CLERK: Civil case No. 06-00025, Nanya Technology Corp., versus Fujitsu, Motion To Compel Substantive Responses to Plaintiffs' First Requests for Production to Defendant Fujitsu Microelectronics America, Inc.; Motion To Clarify Magistrate Judge's Order and Motion To Compel Substantive Responses; Motion To Exceed Number Of Interrogatories and Request for Admissions.

Counsel, please state your appearances.

MR. UNPINGCO: Yes, Your Honor, John Unpingco, from Unpingco and Associates on behalf of plaintiffs. I'll be taking care of the scheduling order.

THE COURT: All right.

MR. UNPINGCO: And my co-counsel.

MR. SHORE: Dennis Shore, Your Honor, I'll be handling the motion, motion to exceed the number of interrogatories and request for admissions.

THE COURT: All right. There's others, there's others in the back.

MR. RAZZANO: Joe Razzano and Alfonso Chan, we're going to sit with Mr. Shore on behalf of plaintiffs.

THE COURT: All right.

MR. BENJAMIN: Dan Benjamin and Michael Murray on behalf of the defendants, Your Honor.

THE COURT: Good morning.

MR. MURRAY: Good morning, Your Honor.

THE COURT: Let me gulp some water; I just took some antibiotics and I need to push that down with some water.

We're here this morning for basically just one motion. It appears that the other motions have been resolved and are rendered moot by a stipulation signed by the parties. And generally, as counsel has said, it appears that the main issue not yet resolved is the plaintiff's motion to exceed the number of interrogatories and requests for admissions.

I've reviewed the motion, and the responses. A couple of things I want to bring out before I hear from the parties.

It seems that the posture of the case at the present time merely is the complaint that's been filed. I don't believe there had been an answer to that complaint other than the motion to dismiss or to transfer the case to the Northern District.

Is that correct, or is that not correct?

MR. MURRAY: Yes, that's correct, Your Honor. Neither defendant has filed an answer yet.

THE COURT: Okay. So I'm going with the complaint that's before the court. In looking at the complaint, of course there's a cause of action for violation of the Sherman Antitrust Act, Clayton Act, three counts for infringement of patents belonging to the plaintiff, 15 general counts of non-infringement of patents belonging to the defendant.

When I look at these causes of action, and there are actually 50 in number, and compare that with perhaps the issues that are at stake in the Northern District, based on what I read from the complaint, the plaintiffs' causes of action for infringement are at issue there, plus four patents belonging to the defendants that are made an issue there. So it seems to me, I guess, at the beginning of this argument, that the only patents at issue in the Northern District are seven in number when compared to the number of patents at issue here. Is that correct?

MR. CHAN: Actually, Your Honor, if I could address that issue. My name is Alfonso Chan, counsel for plaintiff Nanya Technology Corporation. The Nanya filed an answer and counterclaims in the Northern District of California, and in that answer and counterclaims, it is true that the three Nanya patents are at issue. But in addition, the other 15 Fujitsu

patents were placed at issue --

THE COURT: To your answer?

MR. CHAN: Yes, and also the antitrust claims as well. So now the same claims are at issue --

THE COURT: In both courts.

MR. CHAN: -- in both courts, yes.

THE COURT: All right. And the other thing, I had hoped perhaps that the parties would come to a meeting of the minds regarding this issue, because it appears to affect both sides of the equation. I gather from the defendants that if the court were to allow plaintiff's motion, I suppose that they're going to be treated the same way. So I just want to have the parties keep that in mind.

And I note for purposes of my reading of these memoranda that one of the main contentions of the defendant is the fact that generally the rules have not been complied with, technically, by the furnishing of the proposed interrogatories or admissions which would actually provide a basis for finding a need to exceed such a limit. And those are important issues that defendants have raised that I think perhaps also plaintiff should deal with in that motion.

So let me hear from plaintiff at this point.

MR. SHORE: Judge, I'm Kenneth Shore; I

represent Nanya.

THE COURT: And just before we begin, also, my understanding of the motion is that you want to serve generally a beginning set, and once those sets have been I suppose answered, you want to serve a second set.

MR. SHORE: Yes, Your Honor.

THE COURT: So all together we're looking at perhaps 2,000 in number, because you have the two antitrust claims in addition to the 18 patents.

MR. SHORE: I think it's 1800 would be the amount that we're actually requesting, Your Honor.

THE COURT: But you have 1800 representing, those would represent 18 patents; right?

MR. SHORE: One for each patent, Your Honor, one set.

THE COURT: But you're also asserting an additional 25 for the two claims, the two antitrust claims.

MR. SHORE: Correct, Your Honor, but I think 1800 should be enough.

THE COURT: Okay, I see. So the cap is 1800.

MR. SHORE: And that's what we're asking for. I think within the 1800 we can probably hit the antitrust claims as well.

THE COURT: All right.

MR. SHORE: To start off, Judge, I just want to go through quickly the background of the case. This controversy is actually about seven years old, and the parties have been negotiating or discussing some allegations that Fujitsu has made against Nanya about various patents, including some Japanese patents and U.S. patents and some other foreign patents. And when this issue first arose, you know, the parties negotiated I think in good faith for a number of years; when those negotiations broke down, Fujitsu filed a suit in Tokyo District Court against Nanya asserting one Japanese patent, but at the same time they were demanding a billion dollars to settle that case and a license for worldwide sales of Nanya's products. So the issue here and the amount in controversy, you know, is huge, and this is a critical case for my client.

And that also comes back to our counterclaims, and our counterclaims kind of -- they focus around the coercive nature of these negotiations and the coercive nature of the Tokyo lawsuit. In order to settle the Tokyo lawsuit, they've also asserted several U.S. patents that have expired, U.S. patents that we clearly do not infringe, and U.S. patents that are invalid. And what they're trying to do is basically threaten to

exclude Nanya from the Japanese market by tying licenses for U.S. patents over products that we don't infringe and tying licenses to expired U.S. patents to access to the Japanese markets. And that's kind of the basis of our antitrust claims. Those claims are obviously very complicated and those antitrust claims alone are a very large and complex case. And that's kind of what forced us to seek the protection from this court, protection for our access to U.S. markets, protection to our sales in these markets and our profit margin in U.S. markets, including this market here in Guam.

So there are now 18 patents at issue in this case, the 15 Fujitsu patents that Fujitsu has asserted against Nanya, and then we've also asserted three patents of our own. But by asserting these patents against Fujitsu, judge, I want to stress to the court that Fujitsu's framed this controversy, Fujitsu is the one who brought 8 -- 15 different patents. So the complexity of this case is actually a result of Fujitsu's actions and we --

THE COURT: But the cause of action in Northern California only raises seven in total. You've brought the others through your counterclaim.

MR. SHORE: Exactly, Your Honor. But that's

the ones they asserted in the Northern District of California, but that's not the ones they've asserted against us in the negotiations in Tokyo.

THE COURT: But does that -- you see, one of the problems I hear here, or I see here, is that I see these claims generally are of -- it's like a person saying I haven't committed a crime but yet the government hasn't prosecuted legally, as to those non-infringing claims.

MR. SHORE: Well, Your Honor --

THE COURT: And in the absence of an answer, they might say, well, yeah, you haven't infringed.

MR. SHORE: Well, Your Honor, the Declaratory Judgment Act allows this court to have jurisdiction over any ripe controversy, any real controversy between the parties. They've asserted all these 15 patents against us in the negotiations in Tokyo. We chose the 15 Fujitsu patents --

THE COURT: But assuming they did that in Tokyo, though, in the Northern District litigation, they did not assert that.

MR. SHORE: But they filed that case after we filed this case, Your Honor. We chose those 15 patents based upon the 15 patents that they've accused us of infringing. I mean, they've given us a letter, you

know, it took us a while to get the letter out of them, but we got a letter out of them saying here's the patents, here's the U.S. patents that we think Nanya's infringed.

THE COURT: But does it make it ripe for discovery here when I don't see anything that puts it at issue?

MR. SHORE: Well, they've demanded that we pay them licensing fees for those patents.

THE COURT: In the non-legal setting. But in the legal setting here, there's been no answer in the Northern District, they've not actually made it an issue. I'm just raising it for purposes of discovery.

MR. SHORE: Well, they have made it -- I think they have made it an issue, Judge, by accusing us of infringing those patents. You know, they have --

THE COURT: But, you know, I can say that to you outside the courtroom, hey, you've infringed my patents, but as long as I haven't filed something formally, it never becomes an issue in the legal setting.

MR. SHORE: Judge, I'm not sure that is a requirement to grant the court declaratory judgment jurisdiction. If that were the case, well, then you couldn't file declaratory judgment until someone has

sued you for --

THE COURT: But in a sense you're saying I haven't committed a crime, and the government is not charging you.

MR. SHORE: Well, they've accused us of it. And in order to get it off of our back, in order to let us get on with our business and let us sell our products without this threat of a billion dollar lawsuit, we have a right under the U.S. Code to --

THE COURT: But don't you have a right to continue to do business unless some legal action is brought against you?

MR. SHORE: We should be able to do that business without -- you know, clear of any threats, Your Honor. I mean, they've made explicit threats, and you know, explicit assertions of these patents against us.

THE COURT: The threats could be baseless, you know.

MR. SHORE: Which they are baseless, Your Honor, and that's why we filed the declaratory judgment alleging that we don't infringe, the patents are invalid and unenforceable. And we do think they're baseless, you know, that's what we think. And in order to get this controversy finally behind us, we have the

right to come in and file declaratory judgment actions since they've made explicit allegations of infringement of those patents.

THE COURT: All right.

MR. SHORE: And with all these patents at issue, Judge, I think when you're considering how to manage the discovery in this case, the Manual For Complex Litigation talks about early identification and clarification of issues critical to discovery control. And I can't emphasize enough that this case really involves the joinder of 19 different cases. There are 18 -- this is 18 patent lawsuits in one, the joinder of 18 patent lawsuits and an antitrust suit.

So in addition to the discovery for the 18 patent lawsuits and the one antitrust lawsuit, we also have the issue of personal jurisdiction discovery, and so there is, you know, so there's a need for a large number of discovery in this case, Judge, because we could have brought each one of these patent cases, each one of these patent cases could be brought as an individual case. You know, if you file a patent case with one patent, you get 25 interrogatories and 25 requests for admissions. But this is not just one patent, it's 18 patents, 18 patent cases.

And when you look at Rule 26(b)(2)(iii),

Judge, in determining the scope of discovery that you're going to allow and the amount of discovery you're going to allow, the court generally should look at the burden and extent and determine whether or not they outweigh the likely benefits. And Rule 26 gives us five different things to consider. It gives us the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake, and the importance of the proposed discovery in resolving that dispute. And I'll discuss each one of those briefly, Your Honor.

THE COURT: Let me ask you this to begin with. Local Rule 33.1, does it contravene any Federal Rule of Civil Procedure?

MR. SHORE: Excuse me, Judge?

THE COURT: Local Rule 33.1, does that contravene any Federal Rule of Civil Procedure?

MR. SHORE: Judge, under the Federal Rules of Civil Procedure and under the local rules, you have the power and it's within your discretion to tailor the discovery in your cases the way you think it should be --

THE COURT: The rules currently say that if you want to exceed these numbers, you must serve additional interrogatories, you shall submit to the

court --

MR. SHORE: And, Judge, you're talking about the sample interrogatories? We've actually got sample interrogatories. But in this case, sir, what I wanted to do with you today is go through all the different issues that are going to be pertinent in each of those patent cases. And there's going to be discovery in each one of those. I mean, obviously, it would be very burdensome for us on the front end to draft 1800 interrogatories and submit them to you to determine whether you should allow us to draft and serve 1800 interrogatories.

THE COURT: But isn't the whole purpose of 33.1, isn't the whole purpose of that rule is to say to you, well, draft these interrogatories first so that those can be -- it seems to me that you haven't done any drafting in terms of what these requests might be, but you're asking the court at this point to grant, you know, in a sense what the defendants say as a blanket rule in terms of numbers. And at this point your request really appears to be very reasonable, it's just, well, what are the contours?

MR. SHORE: And Rule 33 --

THE COURT: And that's my problem, I don't know what the contours are, in light of the fact that

the first requirement of the rule has not been met.

MR. SHORE: Well, that rule is in place obviously to help you, Judge. I mean that rule is in place to --

THE COURT: Well, to help me and also to help the defendant in terms of perhaps what objection they may make to your request.

MR. SHORE: But I think the defendants are pretty aware of the different issues that arise in patent cases.

THE COURT: I know they are.

MR. SHORE: I mean, they've litigated hundreds of these things. They know exactly what we're going to ask. Rule 33.1 is there for you, Judge. I mean, you have -- I mean, it's there to give you information and make it easier for you to determine how you want to tailor discovery in the cases that you preside over.

THE COURT: Well, let me ask you this. Supposing you ask one question in terms of all of these patents, how have we infringed, that's one question.

MR. SHORE: I've got -- I'll go --

THE COURT: I'm just -- just for purposes of argument, you ask one question: In terms of all of these patents, how have we infringed these patents that you say we've infringed upon.

MR. SORE: Well, I mean --

THE COURT: Would that be a fair question or not?

MR. SHORE: That's a fair question, I mean --

THE COURT: And that's my one question.

MR. SHORE: That's one question we will have in the interrogatories, and actually there will be several different interrogatories going to that same question, how do you allege that Nanya infringes these patents.

THE COURT: Right, that would be the second question.

MR. SHORE: And then there's questions: Did they do a proper Rule 11 investigation before they asserted the patents against Nanya. What evidence do they show that Nanya had actual or constructive notice of the patents. You know, we have interrogatories going to whether or not Fujitsu actually owns the patent, whether or not --

THE COURT: See, that's what I'm saying. All of these questions, instead of it being 500, can be reduced to say a hundred, 150 questions.

MR. SHORE: But --

THE COURT: At the initial stage.

MR. SHORE: At the initial stage there's a lot

of different issues that go with each and every patent. There's the Rule 11 investigation; there's notice; there's ownership, you know, did the named inventors actually invent the patent; did they disclose the patent invention one year prior to the filing date, which would invalidate the patent; were there prior inventions that contemplated the invention of each patent or rendered the invention obvious, which goes to validity and enforcement. How was each one of the patents conceded and reduced to practice, which goes to validity and enforceability.

There's claim terms, like take the 428 patent, for example, there's claim terms like data-latch circuits, I mean, there's strobe signals, clock signals. What's a data-latch circuit? How would someone familiar, skilled in the art define that? Or how they would understand that. Is there extrinsic evidence that they want to bring in to construe these claim terms, or what intrinsic evidence do they want to -- I mean, it just goes --

THE COURT: Can those be obtained through depositions?

MR. UNPINGCO: A moment please, Your Honor.

THE COURT: Yes.

(Pause/plaintiffs' counsel conferred.)

MR. SHORE: Judge, if you like, I've got a presentation that goes through each one of these issues. Of course, we're going to have, you know, with each patent, we're going to have all of these issues. Disclosure will help flush them out. Once these issues, all these different issues that arise in any patent case, once we get the initial set of discovery, that will raise additional issues, but that allows us to go into the depositions knowing what to ask.

I mean, we can't go into -- as interrogatories in any case, when I send a set of interrogatories, I get the answers to the interrogatories, that helps me plan how I'm going to depose someone, that lets me know what questions I want to ask. But if I go into a deposition blind, I go into deposition and I don't know what they're going to allege, you know, constitute a constructive notice, I don't know what the ownership issues are, I don't know how they're saying this invention was conceived and reduced to practice, I can't go into a deposition. Very unproductive for me to go into a deposition and try to start from scratch in discovery with the deposition without having these questions answered. And these are questions that arise in every single patent case.

If you'd like I can go through the

presentation that I've prepared for you today, that we've prepared for you today to show an example patent, the 428 patent, and the types of issues that are going to arise with that one patent. There's even a sample of -- we've got a sample. For example, I can show you a copy of the 428 patent, I've got it right here in one -- which is just one of the 18 patents.

May I approach, Your Honor?

THE COURT: Yes, you may.

MR. SHORE: Which is just one of the 18 patents that's going to be at issue in this case. In addition, I've got a presentation I can go through --

THE COURT: Is the problem -- is the problem, though, that you haven't actually drafted these interrogatories?

MR. SHORE: They're actually drafted in this, they're drafted right here, Judge. And may I approach again, Your Honor?

THE COURT: Yes.

(Handing documents to the court.)

MR. SHORE: In this presentation that I've prepared for you on the 428 patent, it's just an example of one of these patents, one of 18 patents in suit, Judge. This one was filed on January 29, 1999 by Fujitsu listing two inventors. Inventorship is

obviously going to be an issue, as in any patent. We've got the effective -- the priority date of the claim is actually 1998, and that's through a treaty with Japan, because there was a previous Japanese patent. And the patent issued September 18, 2001.

This patent, semiconductor device reconciling different timing signals, there are 42 different claims in this case, in this patent, five independent claims and 37 dependent claims.

And then, for example, we can go to claim one. A semiconductor device which receives addresses in synchronism with the clock signal and receives data in synchronism with a strobe signal, said semiconductor device comprising address-latch circuits which latches the address.

And you can kind of see what we're talking about, claims construction, just right here, Judge. What would someone skilled in the art, how would they -- what is an address-latch circuit. What is a semiconductor device. These all could be, you know, claim issues with regard to defining these claim terms. And this is just one of five independent claims. And then the dependent claims further define the scope of the patent with regard to each of the independent claims.

And then, Judge, once we move on, there's interrogatories, 25 interrogatories. These interrogatories that we prepared for you today, Judge, these interrogatories assume that we do adopt the Northern District rules, Northern District local patent rules, which, and you can see, Judge, Northern District local patent rules. But you have the first --

THE COURT: I'm biased toward the Northern District; I went to school in the Northern District.

MR. SHORE: Okay. You have Rule 11 investigation; in other words, what Rule 11 investigation prior to securing the patent did they conduct. Did Nanya have actual or constructive notice.

Then you go on to ownership. Does Fujitsu actually own the patent. Did Tomita and Kanda actually invent the patented device. You know, did Fujitsu disclose the patent devices more than a year prior to the filing for the patent. Are there prior inventions that contemplated or rendered obvious the invention disclosed in the 428 patent. You have, how was the 428 conceived and reduced to practice.

You know, how will Fujitsu seek to construe claim terms such as address-latch circuits, strobe signals, clock signals, data light memory circuits, address input circuits, timing signals, all these

different things need to be defined. So, and for each, you know, and this is just claim terms in this one claim, one independent claim in one of the patents, and there's 18 different patents.

What extrinsic and intrinsic evidence does Fujitsu intend to use to define these claim terms. What other manufacturers' products does Fujitsu allege infringe. Which claims can be construed as mean plus function claims, under 35 USC, Section 112. What Nanya products does Fujitsu allege infringe the 428 patent. What evidence does Fujitsu intend to use to prove infringement for each of the independent claims.

And in each claim in this patent, Judge, there's five, claim one, claim nine, claim eight, claim 41 and claim 42; so in each one of the patents, 18 patents, you may have four or five independent claims.

Does Fujitsu contend that Nanya directly infringes, induces infringement, or contributes to infringement. Does Fujitsu intend to show willful infringement, and if so, how they intend to do that, which is important, because that would be an issue for attorneys' fees and other things.

You know, what are Fujitsu's alleged damages. Are there other licenses out there establishing a reasonable right. What are the sales of Fujitsu

products incorporating this invention. What are the sales of Nanya products incorporating this invention. How important are the features contemplated by the invention of the 428 patent to the functionality of the devices. Is that something that really matters to the end user or original equipment manufacturers, making the invention more valuable. Are there any exceptional circumstances with the infringement here which would entitle one side to attorneys fees.

And then you have a whole host of issues with invalidity and unenforceability, patentability issues, inequitable conduct at the patent office, laches, patent misuse.

So, as you can see, Judge, for each one of these patents, you have literally dozens of issues that have to be flushed out. And in allowing these interrogatories, you know, allows -- gives us, each side the opportunity to do targeted depositions, and the depositions would be much more productive if this information in this discovery is flushed out first with, with interrogatories.

And just getting back, I mean, obviously, the importance of the discovery in resolving the issues in this case is absolutely critical, and the needs of this case, this additional discovery is absolutely critical.

But if you look at the other Rule 26(b)(2)(iii) factors, (b)(2)(iii) factors that the court would look at, the amount in controversy--their initial demand was over a billion dollars--the amount in controversy still is hundreds of millions of dollars. I mean, obviously, that factor weighs strongly in favor of allowing expansive discovery.

The parties' resources. This isn't David and Goliath, I mean, this is basically Goliath and Goliath. I mean, each side has hundreds of millions and billions of dollars in sales, each side has plenty of lawyers working on its side to get this work done. Each side believes the case is critical, and can garner the resources necessary to get this discovery done.

The importance of the issues at stake, the third factor. I can't over-emphasize how important this is to Nanya. I mean, this is an industry with razor-thin margins, and Fujitsu is demanding license fees of 3 percent on every product Nanya sells on this entire planet. That is an absolutely critical issue to my client.

THE COURT: That's related to the antitrust issue, though.

MR. SHORE: No, that's a Rule 26(b)(2)(iii) factor: Needs of the case, amount in controversy, the

parties' resources, the importance of the issues at stake, and the importance of the proposed discovery in resolving the case.

THE COURT: But I assume the discovery date would be related to your antitrust claims?

MR. SHORE: Of course it's related to our antitrust claims, but it's related to the patent claims as well. I mean these are the factors that you'll consider when you determine whether or not to grant this discovery is the importance of the issues at stake. And, obviously, if it's an industry with razor-thin margins, if we have to pay a royalty to Fujitsu, it might us process out of certain markets. This is a critical case to our client. And when you have such critical issues, those are the kind of cases where the court should grant expansive discovery. You know, and Fujitsu obviously feels that the patents at issue in this case are critically important.

But, you know, I can't -- in summary, Judge, I just want to emphasize that this is not one case, this is 19 different cases. You know, once we get past all of the issues with the patents, the 18 different patents, and all the discovery that we just went over, we still have the issues of the antitrust. You know, what's the relevant market, what other licensing

arrangements does Fujitsu have. Are there collusive licensing arrangements with other semiconductor manufacturers. Is this a scheme to exclude certain manufacturers from the market by placing licensing burdens on them which basically push them out of the industry. We're not the only ones to ever make these kind of allegations against Fujitsu. They're defending plenty other antitrust cases as well related to similar conduct.

And then we have the whole issues with jurisdictional discovery. I mean, the discovery in this case is critical. It's not one case, this is really 19 different cases; and whether this was an antitrust case standing alone, we get 25 interrogatories, 25 requests for admissions at least. And antitrust case is an extremely complicated case in its own right. And then you have 18 different patent cases, each with their issues of validity, infringement, enforceability, you know, the complex issues that we went over earlier.

So, I would ask the court to look at this case not as one case, but as 19 different cases, and each of the 19 cases has its own host of issues that need to be explored in discovery. And the only way we can do this, the only way we can prepare for the depositions,

the only way we can prepare for trial in this case is to have the expansive discovery that we've asked for.

Thank you, Your Honor.

THE COURT: Counsel.

MR. MURRAY: Good morning, Your Honor, I'm Michael Murray representing the defendants.

Your Honor, I'd like to start off just briefly addressing some of the background statements that Mr. Shore made. He made some allegations about Fujitsu asserting expired patents improperly, and improperly trying to tie the litigation going on in Japan to the worldwide markets, et cetera.

Now those are really off point for the topic of today, but I just want to briefly say that none of that is true. The action filed in Japan involves a Japanese patent; Fujitsu has been willing from the beginning to grant a license under that patent alone. Nanya doesn't like the terms of the license that was offered under that patent. There's been no inappropriate attempts to tie settlement of the Japanese case to some sort of worldwide license, so that's just not true. Neither is it true that Fujitsu has demanded a billion dollars in connection with the Japanese litigation.

But let me move on to the issue of this

particular motion. Basically, Your Honor, this motion is extremely premature, for a number of reasons. First of all, as Your Honor noted, we have not yet even filed an answer in this case. What's happening right now is there is jurisdictional discovery going on. Nanya has not filed any interrogatories in connection with the jurisdictional discovery, so apparently they don't feel that they need interrogatories in order to resolve the jurisdictional issues.

The motions to dismiss and transfer have been set for hearing, we're moving forward with document production, we have a stipulation between the parties to sort of stage the discovery and the briefing on the jurisdictional issues. So we certainly think that the jurisdictional issues should be resolved before the court deals with sort of the proper scope of the merits discovery that should go on in this case.

Second, Mr. Shore has really not given the court a good reason for disregarding Rule 33.1. Rule 33.1 sets forth a perfectly reasonable procedure for obtaining additional interrogatories. If they want additional interrogatories, they should write the interrogatories down, submit them. First, of course, have a meet and confer with us to discuss the interrogatories.

The 25 interrogatories that Mr. Shore showed the court this morning I saw for the first time about ten minutes before this hearing. So there's been really an unfortunate reluctance on the part of plaintiff in this case to meet and confer with us and try to work through things. What they should do is follow the local rules. They should serve the 25 interrogatories that they're entitled to serve, they should then write any additional interrogatories that they feel needed, sit down with us and discuss them, we might be able to agree to the interrogatories. If there's some disagreement between the parties, the interrogatories that we agree about should be presented to Your Honor, under Rule 33.1, and if necessary, we can have argument on those particular interrogatories. But to just grant a blank check for 900 interrogatories would just be extremely burdensome, especially this early in the case when, as I said, we haven't filed an answer yet, we really don't know exactly what the posture of the case is going to be a few months from now.

This same relief was requested, interestingly, in the Northern District of California, as part of the initial scheduling before Judge Wilkin; they asked for 25 interrogatories per patent, they got zero. There

was no additional interrogatories granted in the scheduling order that came out of the Northern District of California.

Now, looking at the particular issues that Mr. Shore talked about and the sample interrogatories, as I mentioned, I had very little time to look at them, really just as he was speaking, but a lot of these issues really can be resolved through other ways. The way that a lot of the issues are settled in terms of ownership of the patents and things like that is through documents. And they have in fact served 1500 document requests on us already. They're going to get documents beginning either this week or early next week the documents will start coming, so Mr. Shore won't be going into deposition blind. He will have documents, he'll see the assignments, for example, of rights in the patents to Fujitsu, he'll have time to study them and then he can go into a deposition and ask questions about them. Or if he feels at that time he has to do it through interrogatories, he can follow the local rules and request additional interrogatories.

The system that is set up in the Northern District of California for claim construction is the system that we think really is most appropriate here, which is Local Rule 4-2 in the Northern District of

California. Local Rule 4-2 sets forth a procedure for resolving the claim construction differences, when figuring out what are the terms that are really important in the claims that need to be construed. According to Rule 4-2, there is an exchange of preliminary claims construction and extrinsic evidence, the parties exchange lists of terms that they feel need to be construed, the parties meet and confer to try to narrow those issues.

Now the Northern District of California implemented these local rules really as a result of having parties go through claim construction through this sort of interrogatory way that Mr. Shore is proposing here by serving lots and lots of contention interrogatories, and it's a big burden on the parties; it costs a lot of money to answer all these interrogatories. With 900, Mr. Shore will ask us to define virtually every word in these claims, which is really going to be very burdensome and ultimately not very useful for the case.

And the way that the Northern District of California ultimately set up for parties to resolve these things is through the local rules, which is a nice, straightforward procedure, reduces the burden on both sides, and through that procedure -- and we've

been through this many times -- the parties usually come to some agreement on what they disagree about. Okay. There are these 20 terms at the end of this process, maybe there are 20 terms that need to be construed, and that forms the basis for going into the so-called Markman claim construction hearing where the court resolves the claim construction disputes. It's not through hundreds of interrogatories, that process that Nanya suggested just doesn't make sense, it's very burdensome, and we would suggest that when we get to that point, that the procedures set forth in local rule --

THE COURT: The process that you're suggesting does not exist here, though.

MR. MURRAY: It does not exist here, but Nanya has in fact suggested that the local rules be adopted for this case. We don't think that the court should or needs to wholesale adopt the local rules, but the parties can come to some agreement, I think, that Local Rule 4-2 -- I don't think Nanya is suggesting that the court adopt everything excepting Local Rule 4-2. So Nanya is suggesting, and we agree, that Rule 4 is an appropriate way to resolve the claim construction issues. And once we go through that process, a lot of this will shake out and it won't be necessary to

burden the parties with hundreds and hundreds of interrogatories directed to the claim construction.

So what Mr. Shore is proposing here is really going to be extremely burdensome, it's really not going to move the case forward, it's going to cost a lot of money, and I think that there's just a much more efficient way to do it. And there's been no good argument made here today why the local rules should be disregarded, which is what he's asking the court to do. He's asking the court to set aside the local rule with respect to interrogatories and adopt a completely different procedure to just allow them to serve as many interrogatories, you know, up to this 900 limit as they want, without putting them forth in advance, without meeting and conferring us, and it's really just going to be a very burdensome process, Your Honor.

THE COURT: Well, let's assume that they file with you, and tomorrow all the interrogatories that they want to ask the court to approve, what happens then?

MR. MURRAY: Well, I think that that would be a good first step for them, because that would be in accordance with the local rules, and we would sit down and try to negotiate with them and work something out. If the interrogatories are reasonable and we think will

move discovery forward in this case, perhaps we would agree to them. If we think they're not and then --

THE COURT: The interrogatories that they file today, you said you've looked at it briefly; are these reasonable as far as the defendant is concerned?

MR. MURRAY: I think some of them are clearly not reasonable. But I would, you know, I would request time to study them and discuss them with my client and find out what, what the burden would be on us to respond to them. I think a lot of these -- a lot of the information they're looking for here can and should be obtained through means less burdensome than interrogatories, like documents. I think they should wait and get the documents that they've asked for and see whether they still need this information after getting the documents. They want to know -- well, some of them ask us to identify documents, identify documents concerning --

THE COURT: But the documents won't be received by them until sometime in April, I think. I think the stipulation calls for providing these documents in April.

MR. MURRAY: Well, the parties have agreed and stipulated to sort of staged discovery here, where we're going to focus first on the jurisdictional